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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/653,267	08/31/2000	Meir Eini	00/20309	4053

7590 04/16/2002
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EXAMINER

HAGHIGHATIAN, MINA

ART UNIT PAPER NUMBER

1616

DATE MAILED: 04/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/653,267

Applicant(s)

EINI ET AL.

Examiner

Mina Haghighatian

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 19 February 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-26,29-37 and 40-103 is/are pending in the application.
- 4a) Of the above claim(s) 6,13-25,31,42 and 52-103 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1,4,5,7-12,26,29,30,32-37,40,41 and 43-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) 6,13-25,31,42 and 52-103 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 August 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 4, 5, 7-12, 26, 29-30, 32-37, 40-41 and 43-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter et al (6,224,888).

Vatter teaches cosmetic compositions comprising from about 0 to 90% by weight of a solidifying agent, from about 0 to 90% by weight of an emollient component, from about 0 to 40% by weight of a polar solvent and from about 0.01 to about 50% by weight of vitamin B3 compound, thus meeting instant claims 1, 26 and 37 (see abstract). The emollients of Vatter meet the hydrophobic solvent of the instant claims.

The suitable solvents include flavor oils such as peppermint oil, orange oil and citrus oil. Oils act as emollients and also impart viscosity, tackiness, and drag properties to cosmetic compositions such as lipstick. Examples of suitable oils include hydrogenated vegetable oils, castor oil, palm kernel oil, rapeseed oil, safflower oil, jojoba oil, avocado oil, evening primrose oil, etc, thus meeting claims 4-5, 29-30, 40-41 (col. 5, lines 1-19; col. 6, lines 18-55; col. 12, lines 50-61).

Vatter describes the solidifying agents as being effective in solidifying the particular liquid base materials to be used in cosmetic compositions. The term "solidify" refers to physical and/or chemical alteration of the liquid base material so as to form a solid or semi-solid at ambient conditions, thus rendering instant claim 3 obvious. The solidifying agent is preferably present at a concentration of from about 0 to about 90%,

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more preferably from about 5 to about 40%. **Suitable wax-like solidifying agents include fatty acids, fatty alcohols, fatty acid esters having fatty chains of from about 8 to about 30 carbon atoms. Preferred wax-like materials include cetyl alcohol, palmitic acid, stearyl alcohol, and mixtures thereof. Solidifying agents also include higher fatty acids, i.e. acids having from 12 to 22 carbon atoms.** In the gel sticks the suitable solidifying agents are sodium and potassium salts of higher fatty acids, sodium stearate, sodium palmitate, aluminium stearate, etc. thus meeting instant claims 1, 7-12, 29, 32-37 and 43-48 (col. 8, line 11 through col. 10, line 19).

Vatter also teaches that the solidifying agent in combination with the emollient is believed to act as an occlusive on the skin by forming continuous or discontinuous bi-layer or multi-layer films on the skin (col. 10, lines 47-55).

Vatter discloses some optional ingredients suitable for the composition such as anti-inflammatory agents such as hydrocortisone, and other skin active agents such as vitamin D, retinoic acid, zinc oxide etc (col. 12, lines 19-49).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of Vatter by selecting suitable oil emollients and amounts as disclosed, because of the expectations of successfully producing a cosmetic carrier suitable for active ingredients. Further, one would have been motivated to select emollient oils from renewable sources, such as the disclosed vegetable oils for environmental and marketing reasons.

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Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Vatter et al as applied to claims 1, 4, 5, 7-12, 26, 29-30, 32-37, 40-41 and 43-50 above, and further in view of Geria (4,992,478).

Vatter, discussed above, lacks specific teachings on psoriasis and dermatitis.

Geria teaches anti-inflammatory skin moisturizing composition, comprising an oil phase, an aqueous phase and an effective amount of a topical medicament. The medicament useful in the present invention may be selected from a wide range of compounds such as antiinflammatories, antibiotics, antifungals and compounds for the treatment of psoriasis, dermatitis etc, (col. 7, lines 32-68).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the composition of Vatter by adding the medicaments and the disorders as taught by Geria, with the reasonable expectations of broadening the range of functions for the base composition.

Response to Arguments

Applicant's arguments filed 02/19/02 have been fully considered but they are not persuasive.

Applicant argues that "the prior art references cited by the examiner fail to teach a carrier or composition for topical application which includes at least one long chain fatty alcohol having at least 15 carbon atoms in its carbon backbone and/or at least one fatty acid, having at least 18 carbon atoms in its backbone...". However, this is

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incorrect. Vatter discloses the solidifying agent to be chosen from fatty alcohols containing carbon chain of from about 14 to 18, fatty acids where acids have from 12 to 22 carbon atoms or mixtures thereof (cols 8 and 9). These sections were cited in the previous Office Action.

Applicant argues that Vatter does not describe the composition to be semi-solid at rest and which liquefies upon application of shear forces thereto. However, the composition of Vatter contains all the ingredients of the claimed composition and within the claimed concentration ranges. Therefore a property of such composition would be inherent. Also Vatter clearly teaches his compositions to be in the form of gels, foams and mousses, and these forms tend to liquefy while being rubbed onto the skin.

No claims are allowed. Claims 6, 31, 42 and 52 will be reexamined if the independent claims become allowable.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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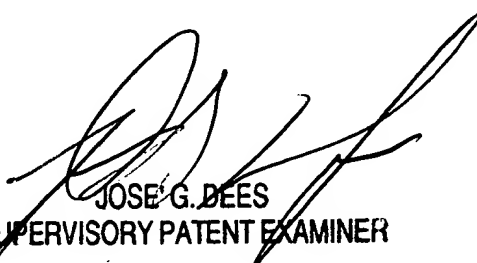
the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghighatian whose telephone number is 703-308-6330. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 703-308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0198.

Mina Haghighatian
April 9, 2002


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
7/6/02